

AMENDED IN ASSEMBLY JUNE 16, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 4, 2005

**SENATE BILL**

**No. 150**

---

**Introduced by Senator Escutia**

February 7, 2005

---

An act to amend Sections 791.10, ~~791.12, and 791.13~~ and 791.12 of the Insurance Code, relating to insurance underwriting.

LEGISLATIVE COUNSEL'S DIGEST

SB 150, as amended, Escutia. Insurance: adverse underwriting decisions.

Existing law requires that, in the event of an adverse underwriting decision, as defined, the insurance institution or agent responsible for the decision comply with certain requirements, including a requirement to either provide the consumer with the specific reasons for the adverse underwriting decision in writing or advise the person that upon written request he or she may receive the specific reasons in writing. Existing law requires the institution or agent, upon receipt of a written request, to provide the consumer with the specific items of personal and privileged information that support those reasons, except as specified.

This bill would require the insurance institution or agent to provide the reasons for the adverse underwriting decision in all instances.

Existing law prohibits an insurance institution or agent from basing an adverse underwriting decision on various types of information, including personal information received from an insurance-support organization whose primary source of information is insurance institutions, except as specified.

~~This bill would additionally require certain information related to a claim in the case of auto insurance or property insurance be obtained by the insurer prior to an adverse underwriting decision, as specified prohibit an insurer, with respect to property insurance, from basing an adverse underwriting decision on information relating to a California claim that occurs on or after January 1, 2006, and that is received from an insurance-support organization, unless the information includes certain elements. It would prohibit property insurance claim information from being submitted to an insurance-support organization unless it is submitted in conjunction with the above information, except as specified.~~

The bill would make additional conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 791.10 of the Insurance Code is  
2     amended to read:  
3     791.10. (a) In the event of an adverse underwriting decision  
4     the insurance institution or agent responsible for the decision  
5     shall provide the applicant, policyholder, or individual proposed  
6     for coverage, in writing, at the time that the adverse action is  
7     communicated, with each of the following:  
8     (1) The specific reason or reasons for the adverse underwriting  
9     decision.  
10    (2) A summary of the rights established under Sections 791.08  
11    and 791.09.  
12    (3) The specific items of personal and privileged information  
13    that support the reason or reasons for the adverse underwriting  
14    decision; provided, however:  
15    (A) The insurance institution or agent shall not be required to  
16    furnish specific items of privileged information if it has a  
17    reasonable suspicion, based upon specific information available  
18    for review by the commissioner, that the applicant, policyholder  
19    or individual proposed for coverage has engaged in criminal  
20    activity, fraud, material misrepresentation or material  
21    nondisclosure.  
22    (B) Specific items of medical record information supplied by a  
23    medical care institution or medical professional shall be

1 disclosed either directly to the individual about whom the  
2 information relates or to a medical professional designated by the  
3 individual and licensed to provide medical care with respect to  
4 the condition to which the information relates, whichever the  
5 individual prefers.

6 Mental health record information shall be supplied directly to  
7 the individual, pursuant to this subdivision, only with the  
8 approval of the qualified professional person with treatment  
9 responsibility for the condition to which the information relates.

10 (4) The names and addresses of the institutional sources that  
11 supplied the specific items of information given pursuant to  
12 paragraph (3); provided, however, that the identity of any  
13 medical professional or medical care institution shall be  
14 disclosed either directly to the individual or to the designated  
15 medical professional, whichever the individual prefers.

16 (b) The obligations imposed by this section upon an insurance  
17 institution or agent may be satisfied by another insurance  
18 institution or agent authorized to act on its behalf.

19 (c) When an adverse underwriting decision results solely from  
20 an oral request or inquiry, the explanation of reasons and  
21 summary of rights required by subdivision (a) may be given  
22 orally to the extent that such information is available.

23 SEC. 2. Section 791.12 of the Insurance Code is amended to  
24 read:

25 791.12. (a) No insurance institution or agent may base an  
26 adverse underwriting decision in whole or in part on the  
27 following:

28 ~~(a)~~

29 (1) On the fact of a previous adverse underwriting decision or  
30 on the fact that an individual previously obtained insurance  
31 coverage through a residual market mechanism; provided,  
32 however, an insurance institution or agent may base an adverse  
33 underwriting decision on further information obtained from an  
34 insurance institution or agent responsible for a previous adverse  
35 underwriting decision. The further information, when requested,  
36 shall create a conclusive presumption that the information is  
37 necessary to perform the requesting insurer's function in  
38 connection with an insurance transaction involving the individual  
39 and, when reasonably available, shall be furnished the requesting  
40 insurer and the individual, if applicable.

1 ~~(b)~~

2 (2) On personal information received from an  
3 insurance-support organization whose primary source of  
4 information is insurance institutions; provided, however, an  
5 insurance institution or agent may base an adverse underwriting  
6 decision on further personal information obtained as the result of  
7 information received from an insurance-support organization.

8 ~~(e) For personal automobile coverage as defined by Section~~  
9 ~~660 and residential property coverage as defined by Section 675,~~  
10 ~~on information relating to a claim received from a~~

11 (3) *For residential property coverage on a single-family*  
12 *dwelling, condominium unit, or residential renter's unit, on*  
13 *information that relates to a California claim occurring on or*  
14 *after July 1, 2006, and that is received from an insurance-support*  
15 *organization whose primary source of information is insurance*  
16 *institutions, unless the information includes the following;*  
17 ~~provided however, that if the information is not available, an~~  
18 ~~insurance institution or agent may base an adverse underwriting~~  
19 ~~decision on further claim history information obtained based~~  
20 ~~upon investigation of the information received from an~~  
21 ~~insurance-support organization.:~~

22 ~~(1)~~

23 (A) The date of loss.

24 ~~(2)~~

25 (B) Whether the claim is open or closed.

26 ~~(3)~~

27 (C) The relevant coverage peril and the description of the  
28 specific cause of the loss.

29 ~~(4) A description of the property damaged or the liability~~  
30 ~~incurred.~~

31 ~~(5)~~

32 (D) *For property losses, identification of the area of the*  
33 *structure or property damaged, in a standard format prescribed*  
34 *by the insurance-support organization.*

35 (E) The address of the damaged property, if applicable.

36 ~~(6) In the case of an auto claim, the determination of fault, if~~  
37 ~~known.~~

38 ~~(7)~~

39 (F) The monetary amount of damages paid, or if open,  
40 reserved.

1 ~~(8) If known, a description of the repairs completed or other~~  
2 ~~status of damages.~~

3 ~~(d)~~

4 ~~(G) If known, an indication of whether repairs were or were~~  
5 ~~not completed.~~

6 (4) On the fact that an individual has previously inquired and  
7 received information about the scope or nature of coverage under  
8 a residential fire or property insurance policy, if the information  
9 is received from an insurance-support organization whose  
10 primary source of information is insurance institutions and the  
11 inquiry did not result in the filing of a claim.

12 *(b) (1) Except as provided in paragraph (2), no information*  
13 *with respect to a claim regarding residential property coverage*  
14 *on a single-family dwelling condominium unit, or residential*  
15 *renter's unit shall be submitted by an insurance institution or*  
16 *agent to an insurance-support organization whose primary*  
17 *source of information is insurance institutions unless all*  
18 *information required by paragraph (3) of subdivision (a) is*  
19 *submitted in conjunction with the claim information.*

20 *(2) Paragraph (1) shall not apply if the claim is withdrawn or*  
21 *denied before all of the applicable data is collected by the*  
22 *insurer, and the claim information submitted specifically*  
23 *identifies the claim as withdrawn or denied.*

24 ~~SEC. 3. Section 791.13 of the Insurance Code is amended to~~  
25 ~~read:~~

26 ~~791.13. (a) An insurance institution, agent, or~~  
27 ~~insurance-support organization shall not disclose any personal or~~  
28 ~~privileged information about an individual collected or received~~  
29 ~~in connection with an insurance transaction unless the disclosure~~  
30 ~~is:~~

31 ~~(1) With the written authorization of the individual, and meets~~  
32 ~~either of the conditions specified in subparagraph (A) or (B):~~

33 ~~(A) If such authorization is submitted by another insurance~~  
34 ~~institution, agent, or insurance-support organization, the~~  
35 ~~authorization meets the requirement of Section 791.06.~~

36 ~~(B) If such authorization is submitted by a person other than~~  
37 ~~an insurance institution, agent, or insurance-support organization,~~  
38 ~~the authorization is:~~

39 ~~(i) Dated.~~

40 ~~(ii) Signed by the individual.~~

~~(iii) Obtained one year or less prior to the date a disclosure is sought pursuant to this section.~~

~~(2) To a person other than an insurance institution, agent, or insurance-support organization, provided such disclosure is reasonably necessary:~~

~~(A) To enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent, or insurance-support organization or insured and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:~~

~~(i) Would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization; or~~

~~(ii) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance-support organization.~~

~~(B) To enable such person to provide information to the disclosing insurance institution, agent or insurance-support organization for the purpose of:~~

~~(i) Determining an individual's eligibility for an insurance benefit or payment; or~~

~~(ii) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.~~

~~(3) To an insurance institution, agent, insurance-support organization or self-insurer, provided the information disclosed is limited to that which is reasonably necessary under either subparagraph (A) or (B):~~

~~(A) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or~~

~~(B) For either the disclosing or receiving insurance institution, agent or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.~~

~~(4) To a medical-care institution or medical professional for the purpose of any of the following:~~

~~(A) Verifying insurance coverage or benefits.~~

~~(B) Informing an individual of a medical problem of which the individual may not be aware.~~

1 ~~(C) Conducting operations or services audit, provided only~~  
2 ~~such information is disclosed as is reasonably necessary to~~  
3 ~~accomplish the foregoing purposes:~~

4 ~~(5) To an insurance regulatory authority; or~~

5 ~~(6) To a law enforcement or other governmental authority~~  
6 ~~pursuant to law.~~

7 ~~(7) Otherwise permitted or required by law.~~

8 ~~(8) In response to a facially valid administrative or judicial~~  
9 ~~order, including a search warrant or subpoena.~~

10 ~~(9) Made for the purpose of conducting actuarial or research~~  
11 ~~studies, provided:~~

12 ~~(A) No individual may be identified in any actuarial or~~  
13 ~~research report.~~

14 ~~(B) Materials allowing the individual to be identified are~~  
15 ~~returned or destroyed as soon as they are no longer needed.~~

16 ~~(C) The actuarial or research organization agrees not to~~  
17 ~~disclose the information unless the disclosure would otherwise be~~  
18 ~~permitted by this section if made by an insurance institution,~~  
19 ~~agent or insurance-support organization.~~

20 ~~(10) To a party or a representative of a party to a proposed or~~  
21 ~~consummated sale, transfer, merger or consolidation of all or part~~  
22 ~~of the business of the insurance institution, agent or~~  
23 ~~insurance-support organization, provided:~~

24 ~~(A) Prior to the consummation of the sale, transfer, merger, or~~  
25 ~~consolidation only such information is disclosed as is reasonably~~  
26 ~~necessary to enable the recipient to make business decisions~~  
27 ~~about the purchase, transfer, merger, or consolidation.~~

28 ~~(B) The recipient agrees not to disclose the information unless~~  
29 ~~the disclosure would otherwise be permitted by this section if~~  
30 ~~made by an insurance institution, agent or insurance-support~~  
31 ~~organization.~~

32 ~~(11) To a person whose only use of such information will be in~~  
33 ~~connection with the marketing of a product or service, provided:~~

34 ~~(A) No medical-record information, privileged information, or~~  
35 ~~personal information relating to an individual's character,~~  
36 ~~personal habits, mode of living, or general reputation is~~  
37 ~~disclosed, and no classification derived from such information is~~  
38 ~~disclosed; or~~

39 ~~(B) The individual has been given an opportunity to indicate~~  
40 ~~that he or she does not want personal information disclosed for~~

1 ~~marketing purposes and has given no indication that he or she~~  
2 ~~does not want the information disclosed; and~~

3 ~~(C) The person receiving such information agrees not to use it~~  
4 ~~except in connection with the marketing of a product or service.~~

5 ~~(12) To an affiliate whose only use of the information will be~~  
6 ~~in connection with an audit of the insurance institution or agent~~  
7 ~~or the marketing of an insurance product or service, provided the~~  
8 ~~affiliate agrees not to disclose the information for any other~~  
9 ~~purpose or to unaffiliated persons.~~

10 ~~(13) By a consumer reporting agency, provided the disclosure~~  
11 ~~is to a person other than an insurance institution or agent.~~

12 ~~(14) To a group policyholder for the purpose of reporting~~  
13 ~~claims experience or conducting an audit of the insurance~~  
14 ~~institution's or agent's operations or services, provided the~~  
15 ~~information disclosed is reasonably necessary for the group~~  
16 ~~policyholder to conduct the review or audit.~~

17 ~~(15) To a professional peer review organization for the~~  
18 ~~purpose of reviewing the service or conduct of a medical-care~~  
19 ~~institution or medical professional.~~

20 ~~(16) To a governmental authority for the purpose of~~  
21 ~~determining the individual's eligibility for health benefits for~~  
22 ~~which the governmental authority may be liable.~~

23 ~~(17) To a certificate holder or policyholder for the purpose of~~  
24 ~~providing information regarding the status of an insurance~~  
25 ~~transaction.~~

26 ~~(18) To a lienholder, mortgagee, assignee, lessor, or other~~  
27 ~~person shown on the records of an insurance institution or agent~~  
28 ~~as having a legal or beneficial interest in a policy of insurance.~~  
29 ~~The information disclosed shall be limited to that which is~~  
30 ~~reasonably necessary to permit the person to protect his or her~~  
31 ~~interest in the policy and shall be consistent with Article 5.5~~  
32 ~~(commencing with Section 770).~~

33 ~~(b) No information shall be submitted by an insurance~~  
34 ~~institution or agent to an insurance-support organization with~~  
35 ~~respect to claims information for personal automobile coverage~~  
36 ~~as defined by Section 660 or residential coverage as defined by~~  
37 ~~Section 675 unless all related information required by~~



1 ~~subdivision (e) of Section 791.12 is submitted in conjunction~~  
2 ~~with the claim information.~~

O